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09/915,027	07/25/2001	Adrianus J. van den Nieuwelaar	V0028/260870	9327

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EXAMINER

PARSLEY, DAVID J

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 06/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/915,027

Applicant(s)

NIEUWELAAR ET AL.

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 58 and 60-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 58 and 60-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## Detailed Action

### *Amendment*

1. This office action is in response to applicant's amendment (paper no. 9) dated 3-5-03 and this action is non-final.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 58, 61-65 and 70-71 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,418,445 to Meyn et al. and U.S. Patent No. 5,279,517 to Koops.

Referring to claims 58 and 62, Meyn et al. and Koops disclose a method for processing a slaughtered bird suspended by its legs comprising at least one tissue connection between the belly skin and the viscera of the bird prior to evisceration of the carcass of the bird, wherein the at least one tissue connection is broken at least partially by introducing separating means – at 21,24 of Meyn et al. and – at 6 of Koops, into the carcass of the bird through a hole in the skin and moving the separating means within the carcass in a substantially horizontal plane – see for example figures 1-2 of Koops and figure 1 of Meyn et al. where in Meyn the rotation of item – 21 causes item – 24 to move in a horizontal manner in the carcass.

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Referring to claim Meyn et al. and Koops disclose the separating means – at 21 of Meyn et al. and – at 6 of Koops is rotated in the carcass – see for example figure 1 and column 3 lines 5-15 and 60-68 of Meyn et al. and figure 1 of Koops which shows item – 6 rotates about – 23.

Referring to claim 61, Meyn et al. and Koops disclose the separating means is moved in a scraping manner between the belly skin and the viscera – see for example figure 1 of Meyn et al. and figures 1-2 of Koops.

Referring to claim 63, Meyn et al. and Koops disclose first moving means – at 8-18 of Koops and – proximate - 23 of Meyn et al. for moving the separating means in the carcass through a hole in the skin.

Referring to claim 64, Meyn et al. and Koops disclose the first moving means move the separating means in a rotating manner – see for example figure 1 and column 3 lines 5-15 and 60-68 of Meyn et al. and figure 2 of Koops which shows the separating means – at 6 rotating around the conveyor at – 13-18.

Referring to claim 65, Meyn et al. and Koops disclose the separating means are in the form of scraping means – see for example figure 1 of Meyn et al. and figures 1-2 of Koops.

Referring to claims 70-71, Meyn et al. and Koops disclose the hole in the skin is an opening obtained by cutting out the vent – see for example figure 1 and column 1 lines 58-68 of Meyn et al. and figures 1-2 of Koops.

Claims 73-74 are rejected under 35 U.S.C. 102(b) as being anticipated by Meyn et al.

Referring to claims 73-74, Meyn et al. discloses the separating means is adapted to break at least one tissue connection between the belly skin and the viscera comprises breaking at least

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one tissue connection between the stomach of the bird and the belly fat on the inside of the belly skin – see for example figures 1 and columns 1-3 of Meyn et al. and figures 1-2 of Koops.

Claim 66 is rejected under 35 U.S.C. 102(b) as being anticipated by Koops. Koops discloses second moving means – proximate 23 for placing a protection element – at the end of item 6 in the carcass prior to or during the moving the separating means in the carcass – see for example figures 1-2 where the spoon element at the end of item – 6 is a protection element in that it protects the meat of the carcass from damage during evisceration.

Claims 67-69, 72 and 75 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,186,679 to Meyn.

Referring to claims 67-68, Meyn '679 discloses a method for breaking at least one tissue connection between the belly skin and the viscera of a slaughtered bird prior to evisceration of the carcass of the bird comprising inserting a substantially elongated element – at 15,20,28,29 with a free end under the skin of the belly of the slaughtered bird which is provided with a hole in the skin, wherein inserting the elongated element comprises, inserting a protection element – at 30, through the hole and into the bird, wherein the protection element comprises a stop face – on either side of item 30, adapted for pushing away the viscera from the hole, moving means – see figures 1a and 4, for positioning the free end of the elongated element in the hole near the stop face, and rotating the elongated element – see figures 1-3, about a substantially vertical axis to insert the free end of the elongated element under the skin and to move the free end of the elongated element away from the stop face – see figures 1-3 with figure 3 showing the elongated elements – at 28 and 29 being rotated away from the protection element – 30 and stop face.

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Referring to claim 69, Meyn '679 discloses the protection element – at 30 is plate shaped – see figures 1b-3b.

Referring to claims 72 and 75, Meyn '679 discloses the hole in the skin is an opening obtained by cutting out the vent – see columns 3-6 where it is inherent that the opening is at the vent since the eviscerating device – at 15 is lowered into the carcass to engage the entrails.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meyn et al. as applied to claim 63 above, and further in view of U.S. Patent No. 4,059,868 to Meyn. Meyn '445 discloses all of the features of the invention as described above except a second moving means for placing a protection element in the carcass prior to or during moving the separating means in the carcass. Meyn '868 does disclose a second moving means – 20 for placing a protection element – 23 in the carcass prior to or during moving the separating means in the carcass – see for example figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Meyn '445 and add the second moving means of Meyn '868, so as to further stabilize the carcass.

Claims 67-69, 72 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyn '445 in view of Meyn '679.

Referring to claims 67-68, Meyn '445 discloses a method for breaking at least one tissue connection between the belly skin and the viscera of a slaughtered bird prior to evisceration of the carcass of the bird comprising inserting a substantially elongated element – at 21 with a free end under the skin of the belly of the slaughtered bird which is provided with a hole in the skin, wherein inserting the elongated element comprises, inserting a protection element – at 25, through the hole and into the bird, wherein the protection element comprises a stop face – 24, adapted for pushing away the viscera from the hole, moving means – see figure 1, for positioning the free end of the elongated element in the hole near the stop face, and rotating the elongated element – see figures 1, about a substantially vertical axis – the longitudinal axis at item 2, to insert the free end of the elongated element under the skin – see figures 1-2. Meyn '445 does not disclose to move the free end of the elongated element away from the stop face. Meyn '679 does disclose to move the free end of the elongated element – at 28,29 away from the stop face – on either side of – 30 – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Meyn '445 and add the movement of the elongated element away from the stop face of Meyn '679, so as to allow for the entrails to be more accurately removed from the carcass.

Referring to claim 69, Meyn '445 and '679 discloses the protection element is plate shaped – see figure 3 of '445 see figures 1b-3b of '679.

Referring to claims 72 and 75, Meyn '445 and '679 discloses the hole in the skin is an opening obtained by cutting out the vent – see column 3 of '445 and see columns 3-6 of '679

where it is inherent that the opening is at the vent since the eviscerating device – at 15 is lowered into the carcass to engage the entrails.

Claims 73-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koops as applied to claims 58 and 62 above, and further in view of U.S. Patent No. 6,190,250 to Volk et al.

Referring to claims 73-74, Koops discloses all the features of the invention as described except the separating means is adapted to break at least one tissue connection between the belly skin and the viscera comprises breaking at least one tissue connection between the stomach of the bird and the belly fat on the inside of the belly skin. Volk et al. does disclose the separating means – at 103 is adapted to break at least one tissue connection between the belly skin and the viscera comprises breaking at least one tissue connection between the stomach of the bird and the belly fat on the inside of the belly skin – see for example figures 1-2 and column 18.

Therefore it would have been obvious to one of ordinary skill in the art to take the device of Koops and add the breaking of the belly tissue of Volk et al., so as to allow for the evisceration of the carcass to be more effective in that the entrails can be easily loosened and then removed from the carcass.

### *Response to Arguments*

4. Regarding claim 58, as seen in figure 1 of the Meyn '445 reference the separation means – at 21 moves in a horizontal direction as seen in the change of position of item – 21 in the right of figure 1 to the position in the left side of figure 1. Further the separation means – at 21 moves



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via rotation about a vertical axis – being the central vertical longitudinal axis of the entire device of the Meyn '445 reference as seen in figure 1.

Further in regards to the protection element, applicant does not state the purpose of the protection element but only states that the device contains a protection element. The item – 25 of the Meyn '445 reference is protection from the cutting blade as stated in the previous office action (paper no. 7) dated 9-5-02. Further, the addition of the limitation that the elongated member moves away from the stop face of the protection element is not found in the Meyn '445 reference but is found in the Meyn '679 reference and the combination of these claims renders the claim obvious as seen above in paragraph 3 of this office action.

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to eviscerating devices in general:

U.S. Pat. No. 2,975,469 to Viscolosi – shows eviscerator moving horizontally

U.S. Pat. No. 3,474,492 to Viscolosi – shows eviscerator moving horizontally

U.S. Pat. No. 4,265,001 to Hathorn et al. – shows evisceration device

U.S. Pat. No. 4,283,813 to House – shows separating means

U.S. Pat. No. 4,561,148 to Bonuchi et al. – shows evisceration device

U.S. Pat. No. 5,766,063 to Hazenbroek et al. – shows rotation about vertical axis

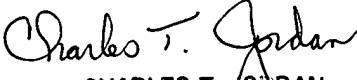
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U.S. Pat. No. 5,816,904 to Tieleman et al. – shows evisceration device

EP Pat. No. 0574617 to Koops – shows eviscerator moving horizontally

6. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

  
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